

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.622(i))	MB Docket No. 18-126
Post-Transition Table of DTV Allotments)	RM-11800
(Bridgeport and Stamford, Connecticut))	

MEMORANDUM OPINION AND ORDER

Adopted: August 11, 2020

Released: August 11, 2020

By the Commission:

I. INTRODUCTION

1. The Commission has before it an Application for Review (AFR) filed on May 17, 2019, by PMCM TV, LLC (PMCM). PMCM seeks review of the Media Bureau's Video Division (the Division) *Report and Order*: (1) granting the rulemaking petition (Petition) filed by Connecticut Public Broadcasting, Inc. (CPBI), licensee of noncommercial educational television station WEDW, channel *49, Bridgeport, Connecticut, to change WEDW's community of license from Bridgeport to Stamford, Connecticut; (2) denying PMCM's opposition to the rulemaking petition; and (3) amending the Post-Transition Table of DTV Allotments and modifying WEDW's license to reflect its community of license as Stamford, Connecticut.¹ For the reasons set forth below, we deny the AFR.²

II. BACKGROUND

2. CPBI filed the Petition proposing the change in community of license on August 28, 2017. At the time, a freeze on the filing of petitions to change full power television station's communities of license was in effect.³ CPBI also filed a minor modification application to move its transmission facilities westward from Bridgeport to Stamford on November 29, 2017, and the application was granted on December 1, 2017 (Stamford Modification Application).⁴ The Division issued a Notice of Proposed Rulemaking on April 26, 2018, shortly after the Media Bureau partially lifted the freeze to allow such community of license changes where no technical modification to a station's facilities were required.⁵

¹ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments (Bridgeport and Stamford, Connecticut)*, Report and Order, 34 FCC Rcd 2198 (MB 2019) (*Report and Order*).

² We are, by separate action, denying another Application for Review filed by PMCM against the grant of an application filed by CPBI to convert WEDW from DTV to a two-site Distributed Transmission System facility (DTS Application). *Application of Connecticut Public Broadcasting, Inc., to Convert to DTS Operation*, Memorandum Opinion and Order, FCC 20-115 (Aug. 11, 2020) (*CPBI DTS MO&O*).

³ See *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes*, Public Notice, 19 FCC Rcd 14810 (MB 2004).

⁴ LMS File No. 00000034869. This application was filed during the second filing window for repacked stations to file applications for alternate channels or expanded facilities. *Incentive Auction Task Force and Media Bureau Announce the Opening of the Second Filing Window for Eligible Full Power and Class A Television Stations—October 3 Through November 2, 2017*, Public Notice, 32 FCC Rcd 6989 (IATF/MB 2017). The facility authorized in the application was never constructed and the construction permit expired on its own terms on August 2, 2019.

⁵ *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments (Bridgeport and Stamford, Connecticut)*, Notice of Proposed Rulemaking, 33 FCC Rcd 3918 (MB 2018) (*NPRM*); *Media Bureau Partially Lifts* (continued....)

3. In the *Report and Order*, the Division granted CPBI's Petition to change WEDW's community of license from Bridgeport to Stamford in the DTV Table of Allotments.⁶ The Division noted that under section 1.420 of the Commission's rules it could modify a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions where, as here, the new allotment would be mutually exclusive with the station's existing allotment.⁷ The Division also noted that Stamford, the third largest city in Connecticut, did not have a full power television station, while Bridgeport currently had two—WEDW and WZME.⁸

4. In granting CPBI's Petition, the Division rejected a number of arguments made by PMCM opposing the change of community of license. First, the Division concluded that CPBI's proposal was consistent with the *Freeze Public Notice* that partially lifted the freeze on the filing of rulemaking petitions to change community of license that do not require a change in the station's technical facilities.⁹ While CPBI filed the Stamford Modification Application subsequent to filing the Petition, the Petition did not request a change in WEDW's authorized technical facilities, nor was such a change necessary to comply with the Commission's community coverage requirements for a full power television station allotted to Stamford since WEDW already placed the requisite signal over Stamford from its authorized facilities.¹⁰

5. The Division also rejected PMCM's argument that the change in community proposal was inconsistent with the public interest because parts of central and southwestern Connecticut would lose service if the station moved to Stamford. Instead, the Division concluded that the proposal was in the public interest because it would result in a preferential arrangement of allotments, giving Stamford its first station, with WZME remaining allotted to Bridgeport, and was also based on WEDW's currently authorized facilities.¹¹ The Division also noted that the entire loss area that would result if CPBI moved

(Continued from previous page)

the *Freeze on the Filing of Petitions for Rulemaking to Change Full Power Television Stations' Community of License*, Public Notice, 33 FCC Rcd 151 (MB 2018) (*Freeze Public Notice*).

⁶ 47 CFR § 73.622(i).

⁷ *Report and Order*, 34 FCC Rcd at 2198-99, n.5; 47 CFR § 1.420.

⁸ The Commission determines a preferential arrangement of television allotments based on five priorities: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located to other communities. *NPRM*, 33 FCC Rcd at 2200, n.7 (citing *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C 148, 167-73 (1952)). WEDW, as the host station, currently operates on channel *49 on a shared basis with WZME, Bridgeport, which will remain allotted to Bridgeport. *Report and Order*, 34 FCC Rcd at 2199-20, n.10. WEDW was reassigned to channel *21 in connection with the incentive auction and received its initial construction permit for that channel on June 29, 2017. LMS File No. 00000025204.

⁹ See *Freeze Public Notice*, 33 FCC Rcd at 151 (partially lifting the freeze "will restore normal processing for those requests to modify a station's community of license where no technical facility change is required to comply with our principal community coverage requirements").

¹⁰ *Report and Order*, 34 FCC Rcd at 2201, para. 7; see also 47 CFR § 73.685(a) (specifying minimum field strengths to be provided over the entire principal community to be served). The Bureau lifted the freeze for requests to modify a station's community of license where no technical facility change was required to comply with the principal community coverage requirements—which would include moving a station's transmission facilities, changing antenna height or orientation, or effective radiated power. The Bureau found that normal processing of community change petitions that do not require a technical facility change would have no impact on the post-incentive auction transition schedule. Repacked stations are required to vacate their pre-auction channels by July 2020. See *Freeze Public Notice*, 33 FCC Rcd at 151.

¹¹ *Report and Order*, 34 FCC Rcd at 2201, para. 8.

its transmission facility to Stamford would continue to be served by at least one of the other noncommercial educational stations licensed to CPBI to other communities in Connecticut.¹²

6. In its AFR, PMCM reasserts its argument that the proposal does not comply with the *Freeze Public Notice* because after CPBI filed the Petition, it filed the Stamford Modification Application to move its transmission facilities to Stamford, which PMCM asserts is a change to the technical facilities.¹³ PMCM admits that WEDW's relocation to Stamford "was not required to accomplish the community of license change," but that, "[t]here is no apparent reason why a change in technical facilities required to meet community coverage requirements should be treated any differently from a technical facilities change that does not affect community coverage requirements . . ."¹⁴ PMCM also posits that CPBI's real motivation in changing its community of license is not to serve viewers in Connecticut, but to "maximize the commercial reach of WZME, which is now sharing the WEDW frequency with CPB[I]" and "has been trying for years to effect a de facto reallocation of its Bridgeport, CT station to New York . . ."¹⁵

7. In addition, PMCM maintains that the grant of the Stamford Modification Application results in a loss of service to over a million people in Connecticut, is inconsistent with section 307(b) of the Communications Act,¹⁶ and that this "error should be corrected."¹⁷ PMCM argues that losses in service, such as those that would result if CPBI constructed that Stamford facility, are prima facie inconsistent with the public interest,¹⁸ and that the Division's reliance on program fill-in service provided by other CPBI stations licensed to Connecticut is flawed because "the Commission does not allow stations to rely on programming service provided by other stations, even when co-owned, to make up for loss of service from the station at issue."¹⁹

8. In its Opposition, CPBI argues that the Division correctly noted that the reallocation of WEDW's channel from Bridgeport to Stamford would result in a preferential arrangement of allotments by providing Stamford with its first local television service, while still leaving Bridgeport with an allotted channel.²⁰ According to CPBI, "PMCM uses its AFR as a vehicle to collaterally attack WEDW's granted [Stamford] modification application," which is a separate matter from the change in community of license that PMCM did not oppose and is already final. CPBI also notes that the Petition required no concurrent

¹² *Id.* at n.30. The Division also rejected PMCM's arguments regarding WEDW's then pending application for a two-site Distributed Transmission System (DTS) facility. *Id.* at 2201-02, paras. 9-10. (LMS File No. 00000036047, granted June 12, 2019, PMCM Application for Review pending). Because PMCM did not raise these arguments in the instant Application for Review, we need not, and do not, describe these arguments at length.

¹³ AFR at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 6. PMCM alleges that the service area of non-commercial WEDW is being dictated by WZME, its commercial sharee, and that CPBI is using the DTS Application to effectuate a rejected site change proposal previously filed by WZME's predecessor in 2008. *Id.* at 6-7. We find PMCM's speculation that WZME's owners are somehow dictating CPBI's operating decisions as unsupported by any record evidence.

¹⁶ 47 U.S.C. § 307(b) ("In considering applications for licenses, and modifications and renewals thereof . . . the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.").

¹⁷ AFR at 2.

¹⁸ *Id.* at 5-6, citing *West Michigan Telecasters, Inc.*, Memorandum Opinion and Order, 22 FCC 2d 943 (1970) (subsequent citations omitted), *Triangle Publications, Inc.*, Decision, 37 F.C.C. 307, 313 (1964), and *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956).

¹⁹ *Id.* at 7.

²⁰ CPBI Opposition at 1-2.

technical changes to satisfy the community license change standards, and was therefore properly considered and granted under the terms of the *Freeze Public Notice*.²¹ Finally, CPBI argues that the discussion of WEDW's sister stations' fill-in service was dicta, and therefore not needed for the Division to approve the community change.²²

9. In its Reply, PMCM again disputes that the CPBI Petition met the express terms of the *Freeze Public Notice*, reasserting that the Petition included a change in technical facilities, because the Stamford Modification Application was "obviously integral" to the community of license change process, and therefore, the Commission should consider the loss of service.²³ PMCM also asserts that by moving to Stamford, CPBI "seems to be turning its back on the very public which mission it is to serve: the people of Connecticut – all in an attempt to move closer to the NY market and serve viewers there."²⁴

III. DISCUSSION

10. After carefully considering the underlying record, we deny the AFR. The Commission will consider an application for review when the petitioner can show that the action taken pursuant to delegated authority: (1) is in conflict with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law and policy which has not been resolved by the Commission; (3) involves application of a precedent or policy which should be overturned or revised; (4) involves an erroneous finding as to an important or material question of fact; or (5) involves a prejudicial procedural error.²⁵

11. Apart from the Bureau's application of its *Freeze Public Notice*, the main issues before us are whether: (1) the reallocation of WEDW's channel from Bridgeport to Stamford is consistent with the Commission's television allotment priorities, which include providing each community with at least one television station;²⁶ and (2) the reallocation is consistent with rules allowing a modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.²⁷ Stamford, a major city in Connecticut, did not have a channel allotted to it while Bridgeport had two. PMCM has cited no prior precedent to suggest that the Division's decision to change WEDW's community of license was inconsistent with long-standing allotment priorities or our rules. We therefore find that the Division's reallocation was proper.

12. We disagree with PMCM's argument that the partial lifting of the freeze should not apply to CPBI's rulemaking petition. Consistent with the requirements of the *Freeze Public Notice*, the Petition did not request a change in WEDW's authorized technical facilities nor was such a change required to comply with the Commission's community coverage requirements.²⁸ WEDW satisfied the Commission's

²¹ *Id.* at 3-4.

²² *Id.* at 5.

²³ PMCM Reply at 1-2.

²⁴ *Id.* at 3.

²⁵ 47 CFR § 1.115(b).

²⁶ *See supra* n.6.

²⁷ *See* 47 CFR § 1.420(i); *see also* *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870, 4872-74, paras. 22-28 (*Change in Community of License R&O*), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990). The Commission will allow for changes in community of license without competing expressions of interest in the limited circumstances where: (1) the new allotment will be mutually exclusive with a station's existing allotment; (2) the new allotment will result in a preferential arrangement of allotments according to the Commission's television allotment priorities; and (3) the new allotment will not deprive a community of its sole transmission outlet. *See Change in Community of License R&O, id.*

²⁸ *Report and Order*, 34 FCC Rcd at 2201, para. 7.

community coverage requirements over Stamford from its authorized transmission facilities located in Bridgeport. There was no need for CPBI to move its transmission facilities to a location in Stamford in order to change its community of license to Stamford. We find that the later-filed Stamford Modification Application to move transmission facilities to Stamford is a separate matter from CPBI's community of license petition and disagree with PMCM that the modification application is integral to consideration of the Petition.

13. While PMCM asserts that there is no apparent reason why a technical change required to meet community coverage requirement should be treated differently from technical changes that do not affect community of coverage requirements, the Media Bureau carefully explained that its action to partially lift the freeze applied only to requests to modify a station's community of license "where no technical facility change is required to comply with our principal community coverage requirements."²⁹ The post-incentive auction transition schedule was carefully planned and coordinated to ensure that stations would transition to their newly assigned channels in a timely manner.³⁰ Technical changes in stations' authorized technical parameters had the potential to disrupt this schedule. The Bureau properly recognized that, if a rulemaking petition to change a community of license did not require a change in the station's technical facilities, then there would be "no impact on the post-incentive auction transition schedule" and lifting the freeze for such petitions would "alleviate any unnecessary burden associated with filing freeze waiver requests in addition to rulemaking petitions."³¹ CPBI's community change petition fell in this category because it did not require a change in the station's technical facilities. If a rulemaking petition to change a community of license required a change in a station's technical facilities to meet community coverage requirements, however, then the Bureau properly kept the freeze in place given the potential impact on the post-incentive auction transition schedule. Because CPBI's rulemaking petition did not require a change in its authorized technical facilities for approval, it complied with the freeze. To be sure, WEDW's separate Stamford Modification Application involved a technical change, but the Commission's rules allowed for such changes to be filed during a special post-auction priority window for reassigned stations.³² CPBI's modification application was filed in accordance with those rules.

14. We also agree with CPBI that PMCM's AFR constitutes an impermissible collateral attack on the Division's grant of the Stamford Modification Application on December 1, 2017. That grant is not before the Commission. No one challenged the Stamford Modification Application nor did anyone challenge the Division's grant of that application.³³ The grant had been final for well over a year when PMCM filed its instant AFR.

15. Finally, we deny PMCM's argument that grant of this community of license change would effectively relocate WEDW to New York City. The petition for rulemaking did not propose to move the authorized technical facilities from its site near Bridgeport and, thus, CPBI did not propose a

²⁹ *Freeze Public Notice*, 33 FCC Rcd at 151 (emphasis added).

³⁰ *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890 (IATF/MB 2017).

³¹ *Id.*

³² 47 CFR § 73.3700(b)(2); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, para. 554 (2014), *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*Incentive Auction R&O*).

³³ The deadline for filing a petition for reconsideration was 30 days after public notice of the grant (in this case, no later than January 2, 2018). 47 U.S.C. § 405(a). See *Amendment of Section 73.622(i), Post Transition Table of DTV Allotments Television Broadcast Stations (Seaford, Delaware)*, Memorandum Opinion and Order, 31 FCC Rcd 9388, 9393, paras. 14-15 (MB 2016).

change to WEDW's service area as part of this rulemaking.³⁴ As the *Report and Order* correctly concluded, the staff's grant of the proposal was independent from any subsequently filed applications, which were processed on their own merits.³⁵

IV. ORDERING CLAUSE

16. Accordingly, **IT IS ORDERED** that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended,³⁶ and section 1.115(g) of the Commission's rules,³⁷ the Application for Review filed by PMCM TV, LLC, **IS DENIED**.

17. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-126 and RM-11800 shall be **TERMINATED**, and their dockets **CLOSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ Because CPBI's application to move the WEDW transmission facilities to a location in Stamford is final and not before the Commission, we do not address the Bureau's decision to grant the application. We note, however, that the Commission has stated that "neither § 307(b), nor our implementing policies that have disfavored service losses, are inflexible mandates." *Incentive Auction R&O*, 29 FCC Rcd 6567, n.1092. Courts have also explained that the Commission "has a broad measure of discretion in dealing with the many and complicated problems of allocation and distribution of service." *Television Corp. of Michigan v. FCC*, 294 F.2d 730, 733 (1961). While PMCM claims that the Commission does not consider alternate services available in a loss area when considering whether to grant an application resulting in a loss from a particular station, Commission precedent is to the contrary. See, e.g., *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 35 (2007) (recognizing that the Commission generally has not favored reductions in television service but that it "is generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less than well served, i.e., served by fewer than five full-power over-the-air signals"); *KRCA License Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 1794, para. 21 (1999) ("the loss of service is of marginal significance because the loss area is well served by numerous other television stations"). The Division observed, if CPBI constructed at the Stamford site, the entire loss area would continue to receive an NCE TV service from at least one CPBI NCE TV station. Because CPBI's application to move the WEDW transmission facilities to a location in Stamford is final and not before the Commission, we do not consider the application of these points.

³⁵ *Report and Order*, 34 FCC Rcd at 2202.

³⁶ 47 U.S.C. § 155(c).

³⁷ 47 CFR § 1.115(g).